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July 24, 2003

Docket Management Section
US Department of Transportation
Room PL-401
400 Seventh Street, S.W.
Washington, DC 20590

SUBJECT: Comments on the Proposed Collection of Information
Docket No. NHTSA-2001-10856
Motor Vehicle Safety: Disposition of Recalled Tires

On behalf of its tire manufacturer members, the Rubber Manufacturers Association (RMA)¹ appreciates the opportunity to submit these comments in response to the Request for Public Comment on Proposed Collection of Information in the above captioned proceeding.

NHTSA has requested comment (68 FR 28876) under the Paperwork Reduction Act (PRA) with regard to the agency's proposed modifications to already required quarterly reports containing certain information about the progress of recalls. However, NHTSA has not yet complied with PRA requirement to provide burden estimates and request comment on a number of significant reporting requirements that are contained in the proposed rule. Furthermore, the discussions of the PRA issues contained in the agency's Notice of Proposed Rulemaking (66 FR 65165) and Supplemental Notice of Proposed Rulemaking (67 FR 48852) also did not request comment under the PRA with respect to a number of specific reporting requirements contained in the proposed rule. It is important to note that the elaborate reporting requirements proposed by NHTSA are not required by the TREAD Act and would contradict the purpose of the most fundamental purpose of the PRA, to "minimize the paperwork burden ... resulting from the collection of information by or for the Federal Government;" 44 USC 3501 (1).

The proposed rule includes the following sections that contain provisions subject to the information

¹The Rubber Manufacturers Association ("RMA") is the leading national trade association representing the interests of tire and rubber manufacturers in the United States. RMA's membership includes all of the country's major tire manufacturers: Bridgestone Americas Holding, Inc., Continental Tire N.A., Inc., Cooper Tire & Rubber Company, The Goodyear Tire & Rubber Company, Michelin North America, Inc., Pirelli Tire North America, Inc. and Yokohama Tire Corporation.

collection requirements of the PRA and, thus, would require OMB approval.

1. § 573.5 (c)(9)(E). Plan for Disposition of Recalled Tires.

This section of the proposed rule states, “Manufacturers must implement the plans for disposition of recalled tires that they file with NHTSA pursuant to this paragraph [emphasis added]. NHTSA has not solicited comment on this proposed collection of information as required by the PRA. We also note that the PRA’s definition of “collection of information” includes “reporting or recordkeeping requirements.” 44 USC § 3502(3)(A)(I). [emphasis added] Thus, even if NHTSA were not to require that the plan be submitted to the agency, it would still be subject to the requirements of the PRA.

NHTSA’s duties under the PRA include, but are not limited to, developing “a specific objectively supported estimate of burden” 44 USC § 3506(c)(1)(A)(iv) and seeking public comment on this estimate 44 USC § 3506(c)(2). It is important to note “burden” is defined by the PRA as the time, effort and financial resources necessary to “generate, maintain or provide information to or for a Federal agency...”. 44 USC § 3502(2). The PRA provides a significant level of specificity as to the resources that need to be included in the agency’s estimate of burden. Therefore, NHTSA must provide for public comment “a specific objectively supported estimate of burden” associated with developing the plan and carrying out the various associated communications that NHTSA would require in their proposed rule implementing section 7 of the TREAD Act prior to submitting their request to OMB. Furthermore, we also note that the definition of burden requires the agency to associate credible costs to the time of various personnel required to comply with the information collection. Therefore, not assigning specific costs to burden hours, as was NHTSA’s practice in the Request for Comment with respect to the quarterly reports, is not acceptable under the PRA.

It is also important to note that the PRA requires NHTSA to “certify (and provide a record supporting such certification, including public comments received by the agency) that each collection of information submitted to the Director for review... is necessary for the proper performance of the functions of the agency, including that the information has practical utility.” 44 USC § 3506(c)(3), [emphasis added]. In our comments to the docket of February 19, 2002, we pointed out that much of the information NHTSA proposed requiring was “unnecessary,” i.e. did not have practical utility, and “would prove to be a paperwork nightmare.” RMA recommended a more flexible, less burdensome regulatory alternative to meet the requirements of section 7. In response to these comments, NHTSA published a Supplemental Notice of Proposed Rulemaking that requested public comment on RMA’s proposal.

We would like to use this opportunity to formally state that the rule proposed by NHTSA does not comply with the requirements of the PRA since much of the detailed information requested lacks practical utility as defined by 44 USC § 3502 (11) and that the agency has not minimized the burden of proposed information collection as required by 44 USC (c)(2)(A)(iv). We will provide more detailed comments on these issues when NHTSA publishes the required *Federal Register* seeking comment on the information collection

associated with proposed § 573.5 (c)(9)(E) as well as with the other proposed sections detailed below. In the meantime, we continue to urge NHTSA to revise the proposed rule in accord with our recommendations so as to ensure that the associated information collection complies with the PRA.

2. § 573.5 (c)(9)(A)(1). Notifications to Stores, Dealers, Distributors and Outlets

NHTSA has not requested comment or fulfilled other PRA duties with respect to the detailed and burdensome notification that manufactures would be required to provide to distributors and retail vendors that are authorized to replace tires subject to a recall. The definition of “collection of information” contained in the PRA includes “disclosure to third parties or the public... regardless of form or format... identical reporting or recordkeeping requirements...”. 44 USC § 3502 (3)(A). The proposed notification requirements are clearly a reporting requirement as defined by the PRA. However, should NHTSA not consider manufacturer owned or controlled outlets to be third-parties or the public, these notification instructions would still be subject to the PRA as they would meet the definition of “recordkeeping requirement” under the 44 USC § 3502(13).

3. § 573.5 (c)(9)(B)(1). Written Directions to Manufacturer Owned and Controlled Outlets Regarding Altering Recalled Tires

NHTSA has not requested comment or fulfilled other PRA duties with respect to the detailed written instructions manufacturers would be required to provide to manufacturer owned or controlled outlets regarding altering recalled tires. These proposed written directions would be a collection of information under the reporting and/or recordkeeping definitions contained in the PRA.

4. § 573.5 (c)(9)(B)(2). Written Guidance to Non-Manufacturer Owned/Controlled Outlets

NHTSA has not requested comment or fulfilled other PRA duties with respect to the proposed detailed written guidance manufacturers would be required to provide to other, i.e. non-manufacturer owned or controlled, outlets authorized to replace recalled tires. This proposed written guidance would be a collection of information as defined by the 44 USC § 3502 (3)(A).

5. § 573.5 (c)(9)(B)(3). Monthly Reports from Manufacturer Owned/Controlled Outlets to the Manufacturer on Recalled Tires Not Rendered Unsuitable

NHTSA has not requested comment or fulfilled other PRA duties with respect to the proposed monthly reports that would be sent from manufacturer owned/controlled outlets to the manufacturer. These proposed reports would be a collection of information under the reporting and/or recordkeeping definitions contained in the PRA.

6. § 573.5 (c)(9)(C)(1). Written Directions to Manufacturer Owned and Controlled Outlets Regarding Compliance with State and Local Laws and Regulations

NHTSA has not requested comment or fulfilled other PRA duties with respect to the proposed written directions to manufacturer owned/controlled outlets on the need to comply with state and local regulations as well as the “further direction and guidance” on limiting landfill disposal of recalled tires and channeling the tires to a category of positive reuse. These extensive and burdensome proposed written directions would be a collection of information under the reporting and/or recordkeeping definitions contained in the PRA.

7. § 573.5 (c)(9)(C)(2). Written Guidance to Other Outlets Regarding Compliance with State and Local Laws and Regulations

NHTSA has not requested comment or fulfilled other PRA duties with respect to the proposed written guidance directions to other outlets authorized to replace recalled tires on the need to comply with state and local regulations. This proposed written guidance would be a collection of information under the PRA.

8. § 573.5 (c)(9)(C)(3). Monthly Reports from Manufacturer Owned/Controlled Outlets to the Manufacturer on Improperly Disposed Tires

NHTSA has not requested comment or fulfilled other PRA duties with respect to the proposed monthly reports that would be sent from manufacturer owned/controlled to the manufacturer on tires disposed in violation of applicable laws and regulations. These proposed reports would be a collection of information under the reporting and/or recordkeeping definitions contained in the PRA.

9. § 573.5 (c)(9)(D). Written Directions to Manufacturer Owned and Controlled Outlets Regarding Employee Education

NHTSA has not requested comment or fulfilled other PRA duties with respect to the proposed written directions that would be sent to the person in charge of each manufacturer owned/controlled outlet with “further instructions” to notify employees regarding the various proposed requirements. These proposed written direction and instructions would be a collection of information under the reporting and/or recordkeeping definitions contained in the PRA.

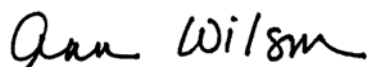
NHTSA’s Proposed Reporting Requirements Are Not Required by the TREAD Act and Would Violate The Paperwork Reduction Act

The only reporting by tire manufacturers required by Section 7 of the TREAD Act is the inclusion of information about progress in their notification and remedy campaigns in their quarterly reports to the Secretary. Thus, the only reporting information required by Section 7 are the modifications

to the quarterly reports on which NHTSA has requested comment in the subject *Federal Register* notice. Unfortunately, NHTSA's proposed rule would also impose extensive, elaborate and burdensome reporting requirements that are not required by the TREAD Act and for which NHTSA has not provided burden estimates or requested comment in their *Federal Register* notice of May 27, 2003. In that the proposed reporting and recordkeeping requirements, other than modifications to quarterly reports, are superfluous to the TREAD Act's Section 7 reporting requirements and would be highly burdensome, they would violate the Paperwork Reduction Act. The PRA requires that agencies "minimize the burden of the collection of information on those who are to respond...". 44 USC 3506 (c)(2)(A)(iv). In order to comply with the TREAD Act, the Paperwork Reduction Act, and the information contained in NHTSA's request for comment on the proposed information collection request, the agency needs to modify the proposed rule to require reporting of only the information specified in Section 7 of the TREAD Act.

We look forward to continuing to work cooperatively with NHTSA on achieving full compliance with the Paperwork Reduction Act with respect to the agency's implementation of section 7 of the TREAD Act.

Sincerely,

A handwritten signature in black ink that reads "Ann Wilson". The signature is written in a cursive, flowing style.

Ann Wilson
Senior Vice President